

24 --22. (new) A process for increasing crop selectivity during the application of one or more agrochemically active compounds for controlling harmful plants, which comprises applying the combination as claimed in claim 1 to the harmful plants. - - .

REMARKS

Pursuant to 37 C.F.R. 1.17(a) and 1.136(a), a three month extension of time, i.e. from February 20, 2002 up to and including May 20, 2002, is respectfully requested. Enclosed herewith is a check for \$920.00 in payment of the fee thereof. Any deficiency or overpayment in this fee, or any other charge occasioned by this paper, or any overpayment in any fee occasioned by this paper may be charged or credited to Deposit Account No. 50-0320.

The present invention relates to combinations of crop protection agents with polymer and ionic auxiliaries which permit a controlled release of an active compound. These combinations can be used to increase crops electivities and to reduce antagonisms and provide particularly good results in the case of herbicides, particularly, in the case of mixtures of herbicides with growth regulators and safeners.

Claims 5 - 6, 17 and 18 are rejected under 35 U.S.C. Section 112, second paragraph, as indefinite. In response, Applicants have amended claim 5 to delete the certain ratio ranges, which have now been set forth in new claims 19 and 20.

With respect to the language in claim 17 concerning the formulation of the combination of the active ingredient with a suitable polymer, by known processes, Applicants submit that this language is not indefinite and that one of skill in the art would be well aware of the appropriate processes to be utilized. Applicants respectfully request reconsideration of the

refusal under 35 U.S.C. Section 112, second paragraph with respect to the language in claims 5, 6, 17 and 18.

Claims 9 and 10 have been criticized as reciting the use of combinations. In response, Applicants have cancelled claims 9 and 10, without prejudice, and have added therefor new claims 21 and 22.

The phrase "which are known per se" in claims 17 and 18 has been criticized. In response, Applicants submit that "which are known per se" refers what would be known to one of skill in the art. It is submitted therefore that the language is in good form and should be accepted and that any rejection premised upon same is unwarranted and should be reconsidered and withdrawn.

Claims 1 – 4, 6, 7, 9, 10 and 13 – 17 are rejected under 35 U.S.C. Section 102(b) as anticipated by Frisch et al, U.S. Patent No. 5,238,904. Without prejudice to their position concerning the patentability of the subject matter as originally presented, but in order to expedite allowance of this application, Applicants have amended claim 1 to specify the ionic polymer is selected from the group consisting of polyacrylates, polymethacrylates, polyvinyl acetates, polycarbonates, polyesters, polyaspartates, phospholipides, polysaccharides and silicates. Applicants submit that claim 1 as amended is patentable over Frisch, and that the rejection under Section 102(b) should be reconsidered and withdrawn.

Claims 5, 8 and 18 are rejected under 35 U.S.C. Section 103(a) as unpatentable over Frisch et al. It is maintained in the Action that one of skill would have been motivated to determine optimum ratios and amounts in order to develop a composition/method that would be effective in controlling undesirable plant growth. The Examiner also maintains that it is well known in the art to use safeners in herbicidal compositions.

In response, Applicants submits that the Section 103(a) rejection is unwarranted and should be withdrawn. Applicants point out that Frisch relates to specific herbicidal aqueous preparations which contain glufosinate or its salts. Frisch does **not** relate in any way to a controlled release combination as is the case with Applicants' invention.

Applicants submit therefore that there is no teaching or suggestion in Frisch with respect to the application of the concept of the present invention for controlled release purposes. Therefore, Applicants submit that Frisch fails to teach or suggest the present invention.

Applicants respectfully request that the Section 103 rejection be reconsidered with the following in mind. First, it is well established that "there must be some reason for the combination other than the hindsight gleaned from the invention itself". Uniroyal v. Rudkin-Wiley, 5 U.S.P.Q. 2d 1434, 1438 (Fed. Cir. 1988). Second, there must be some prior art teaching which would have provided the necessary incentive or motivation for modifying the primary reference in the manner suggested by the Examiner. In re Laskowski, 12 U.S.P.Q. 2d 1397, 1399 (Fed. Cir. 1989). Third, "obvious to try" is not the standard under 35 U.S.C. §103. In re Fine, 5 U.S.P.Q. 2d 1596, 1599 (Fed. Cir. 1988). Further, as recently stated by the Court In re Fritch, 23 U.S.P.Q. 2d 1780, 1783-1784 (Fed. Cir. 1992):

The mere fact that the prior art may be modified in the manner suggested by the Examiner does not make the modification obvious unless the prior art suggests the desirability of the modification.

Moreover, Applicants submit that the instant specification contains **more** than sufficient evidence to demonstrate the outstanding activity obtained with the claimed combinations according to the instant invention. Specifically, attention is directed to the specification at pages 14 – 17, particularly, the statements and examples 1 – 3 at pages 17 – 18

wherein the considerably increased activity obtained with the claimed combination in contrast to previously known mixtures is set forth in detail.

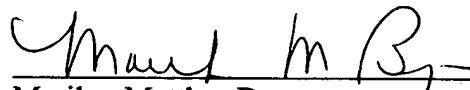
Therefore, Applicants submit that the rejection under 35 U.S.C. Section 103 is unwarranted and should be withdrawn.

Applicants urge that the instant application is now in condition for allowance, the early notification of which is respectfully solicited.

Respectfully submitted,

FROMMER LAWRENCE & HAUG LLP
Attorneys for Applicants

By:



Marilyn Matthes Brogan
Registration No. 31,223
745 Fifth Avenue
New York, New York 10151
(212) 588-0800

APPENDIX- MARKED UP VERSION TO SHOW CHANGES MADE

--1. (Amended) A combination of at least one agrochemically active compound having cationic functional groups with an anionic polymer, wherein the anionic polymer is selected from the group consisting of polyacrylates, polymethacrylates, polyvinyl acetates, polycarbonates, polyesters, polyaspartates, phospholipides, polyssaccharides and silicates, with formation of electrostatic interactions between these components.--

--5. (Amended) The combination as claimed in claim 1, wherein the molecular weight of M_N of the polymer is ≥ 500 , [preferably about 1 000 to 1 000 000,] and the polymer is employed in a weight ratio to the active compound of from about 0.001:1 to about 1:0.001, [preferably from 0.01:1 to 1:0.01, most preferably from 0.1:1 to 1:0.1].--

Add new claims 19 and 20 as follows:

--19. (new) The combination as claimed in claim 1, wherein the molecular weight of M_N of the polymer is about 1,000 to 1,000,000, and the polymer is employed in a weight ratio to the active compound of from about 0.1:1 to 1:0.1.--

--20. (new) The combination as claimed in claim 1, wherein the molecular weight of M_N of the polymer is \geq or equal to 500, and the polymer is employed in a weight ratio to the active compound of from about 0.1:1 to 1:0.01.—

Cancel claims 9 and 10, without prejudice, and add new claims 21 and 22, as follows:

--21. (new) A process for suppressing antagonistic interactions during the application of agrochemically active compounds for controlling harmful plants, which process comprises applying the combination as claimed in claim 1 to the harmful plants.

--22. (new) A process for increasing crop selectivity during the application of one or more agrochemically active compounds for controlling harmful plants, which comprises applying the combination as claimed in claim 1 to the harmful plants. - - .